

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
GALLATIN RIVER BASIN (41H)  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANT: Farmers Canal Co.

OBJECTORS: Farmers Canal Co.

COUNTEROBJECTORS: Cove Management LLC

NOTICE OF INTENT TO APPEAR: Blackwood Dry  
Creek LP; City of Bozeman; Salar  
Properties LLC; Morgan Family LLC;  
**Oak Capital Partners IV, LLC; Pac  
West Diversified, LP**

**CASE 41H-0250-R-2020**

41H 120530-00	41H 120534-00
41H 120531-00	41H 120535-00
41H 120532-00	41H 120536-00
41H 120533-00	41H 120537-00

**ORDER ON MOTION FOR RESOLUTION OF ISSUE REMARKS AND  
OBJECTIONS**

Claimant and objector Farmers Canal Co. ("FCC") seeks an order from the Court resolving issue remarks and objections for the eight water right claims consolidated in this case by modifying certain elements of the claims.

**BACKGROUND**

FCC is a Montana corporation that owns and operates the Farmers Canal in Gallatin County. The canal diverts and carries water from the West Gallatin River and

other sources to various distribution points in the Gallatin Valley. FCC uses the Farmers Canal to convey water pursuant to the eight water right claims it owns. FCC also allows various third parties to use the canal to convey their water rights.

The Water Court decreed FCC's claims in the Preliminary Decree for the Gallatin River (Basin 41H), issued on October 11, 2018. All of the claims are decreed for irrigation use, and they all share the same place of use. The following table summarizes the claims, as described on abstracts included in the Basin 41H Preliminary Decree:

Claim No.	Priority	Source	Flow rate	Type
41H 120530-00	6/30/1891	West Gallatin River	15.00 cfs	Use
41H 120531-00	6/15/1891	West Gallatin River	75.00 cfs	Decreed
41H 120532-00	4/2/1892	West Gallatin River	45.50 cfs	Decreed
41H 120533-00	6/15/1883	West Gallatin River	1.00 cfs	Decreed
41H 120534-00	7/1/1890	West Gallatin River	18.50 cfs	Decreed
41H 120535-00	9/29/1890	West Gallatin River	125.00 cfs	Decreed
41H 120536-00	6/30/1890	Hyalite Creek	125.00 cfs	Use
41H 120537-00	6/30/1890	South Cottonwood Creek	125.00 cfs	Use

The Water Court previously addressed these claims in case 41H-256, which followed the Court's issuance of the Basin 41H Temporary Preliminary Decree ("TPD") in 1985. In that case, the Court accepted a stipulation between FCC and the United States of America dated January 23, 1995. The stipulation specified a maximum acreage limit of 14,866.00 acres and conditionally resolved the United States' objections to the claims. The master's report, order adopting the report, and the stipulation are included in the claim files for these claims.

The preliminary decree abstracts for claims 41H 120530-00 and 41H 120536-00 each contain one issue remark. None of the other preliminary decree abstracts contain issue remarks. FCC self-objected to all eight claims. Farmer's objections all state:

The purpose of this water right is "Sale" as noted in Bell vs. Armstrong (Gallatin District Court Case 3850). In keeping with Curry vs. Pondera County Canal Company (Mt Sup. Court DA-14-0529) a service area can be used to describe the place of use or in the alternative the maximum historical place of use.

Cove Management LLC (“Cove”) and Lazy J. Utility Assn. (“Lazy J”) filed counterobjections to the claims. Blackwood Dry Creek LP (“Blackwood”), the City of Bozeman (“Bozeman”), Lower Middle Creek Supply Ditch Co. (“Lower Middle Creek”), the State of Montana University System (“MSU”), Morgan Family LLC (“Morgan”), and Salar Properties LLC (“Salar”) filed notices of intent to appear (“NOIA”).

After the Water Court consolidated the claims, the Court put the case on a hearing track. Lower Middle Creek withdrew its NOIA on February 2, 2022. (Doc. 59.00). FCC and Blackwood filed a stipulation on November 8, 2021 resolving Blackwood’s NOIA. (Doc. 56.00). FCC and Cove filed a stipulation on September 22, 2021 resolving Cove’s counterobjection. (Doc. 55.00). MSU withdrew its notice of intent to appear on November 21, 2022. (Doc. 74.00). Lazy J withdrew its counterobjections on December 5, 2022. (Doc. 78.00).

FCC filed a “Motion for Resolution of Issue Remarks and Objections and Brief in Support” on December 1, 2022. (Doc. 75.00) (“Motion”). The Motion asks the Court to approve several modifications to its claims, including approval of a “service area” as part of the place of use. Blackwood filed a status report on December 6, 2022 raising concerns about the lack of a legal description for the proposed service area. (Doc. 79.00). FCC responded on January 31, 2023 with a document that includes proposed legal descriptions. (Doc. 83.00). No one else filed substantive objections to FCC’s motion.

## **ISSUES**

FCC’s Motion raises four categories of issues for the Court to address:

1. Should the Court modify the place of use for all the claims to include a service area?
2. Should the Court modify the purpose of use for all the claims from irrigation to “sale”?
3. Should the Court modify the associated claims information remark?
4. Should the Court modify the period of use of FCC’s three use right claims (claims 41H 120530-00, 41H 120536-00, and 41H 120537-00)?

5. Are the priority date issue remarks resolved for claims 41H 120530-00 and 41H 120536-00?

## **DISCUSSION**

### **A. Applicable Standards.**

When a water right appropriator seeks to amend an element of their own water right, the appropriator must provide sufficient evidence to prove by a preponderance of the evidence that the modification overcomes the prima facie status of the claim. Rule 19, W.R.Adj.R.; *Nelson v. Brooks*, 2014 MT 120, ¶ 34, 375 Mont. 86, 329 P.3d 558. Similar to a motion to amend or any other request for a dispositive ruling on its objections, FCC's motion "is subject to the standards applied to motions for summary judgment." *In re Open A Ranch Inc.*, 43B-72; 2018 Mont. Water LEXIS 7, \*3-4. As such, even though FCC's motion is largely unopposed, the Court still must determine whether FCC meets the requisite burden of proof to modify the claims. *See, e.g., Nelson v. City of Billings*, 2018 MT 36, ¶11, 390 Mont. 290, 294, 412 P.3d 1058, 1063 ("failure to respond [to summary judgment motion] did not relieve the District Court of the duty to engage in a Rule 56 analysis when presented with a motion for summary judgment"), *citing Chapman v. Maxwell*, 2014 MT 35, ¶11, 374 Mont. 12, 322 P.3d 1029.

### **B. Application to Requested Modifications.**

#### *1. Proposed Modification to Service Area Place of Use (all claims).*

The Water Use Act requires the Court to adjudicate "the place of use and a description of the land, if any, to which the right is appurtenant." Section 85-2-234(6)(e), MCA. FCC's motion asks the Court to recognize its place of use as a service area by modifying the decreed place of use so it covers all of the land depicted on the map FCC filed with the motion (Motion, Ex. 000030), and the legal descriptions contained in FCC's supplemental filing. (Doc. 83.00). FCC also asks the Court to recognize 14,866.00 acres as the "maximum number of historically irrigated acres" within the proposed service area. FCC's motion argues the company "is entitled to a decreed service area within which water appropriated and sold by the Company can be used." (Motion, at 6).

The Water Use Act does not specifically mention the concept of a service area to define a place of use. However, because the Montana Constitution protects “existing rights,” the Court may recognize a service area place of use if a service area is part of “the use of water that would be protected under the law as it existed prior to July 1, 1973.” Mont. Const., art. IX, § 3(1); § 85-2-102(13), MCA (defining “existing right”). Absent any express statutory authority for service areas, the Court must look to existing precedent to make this determination.

The Montana Supreme Court has decided several cases affirming Water Court decisions recognizing service area places of use for existing water rights. In *Curry v. Pondera Cnty. Canal & Reservoir Co.*, 2016 MT 77, 383 Mont. 93, 370 P.3d 440, the Court acknowledged a distinction between appropriators who beneficially use water on their own land, and appropriators that do not own the land where water is put to use:

[W]ater-appropriating entities, such as irrigation districts, state water projects, and private corporations, also may own water rights, but at the same time it is possible they do not own the land upon which the water is put to use. These entities define the relationship between the water right owner and the water user in their organization's documents (*i.e.* bylaws, contracts, shares of stock, etc.).

*Curry*, ¶ 41.

The Supreme Court also affirmed a service area place of use for existing water rights in *In re E. Bench Irrigation Dist.*, 2021 MT 319, 406 Mont. 502, 501 P.3d 380. Additionally, the Water Court has decreed service area places of use in several decisions not appealed to the Montana Supreme Court. For example, in *In re Dodson Irr. Dist.*, Case 40J-99, 2018 WL 7574161 (Nov. 16, 2018) (Or. Vacating Master’s Order and Approving Stipulation), the Water Court approved a stipulation requesting a 112,475.67 acre service area for two Milk River irrigation districts and the United States. As part of the stipulation, the parties agreed to a maximum of 43,493 acres irrigated in any given year within the larger service area. The Court also approved service areas in cases involving other Milk River irrigation districts and the United States in *Alfalfa Valley Irrigation Dist. v. United States (Bureau of Reclamation)*, 2021 Mont. Water LEXIS 956

(Case 40J-0618-P-2019); *In re United States (Bureau of Reclamation)*, 2020 Mont. Water LEXIS 302 (Case 40J-619); and *In re Paradise Valley Irrigation Dist.*, 2020 Mont. Water LEXIS 306 (Case 40J-617).

All of the service area cases fit a pattern where an appropriator distributes water to other water users within some defined area under some kind of contractual, corporate, transactional, or statutory structure. The Montana Supreme Court first recognized this structure as a beneficial use in *Bailey v. Tintinger*, 45 Mont. 154, 122 P. 575 (1912). In *Bailey*, the Court cited the provision from the Montana’s 1889 Constitution that stated:

The use of all water now appropriated, or that may hereafter be appropriated for sale, rental, distribution or other beneficial use \* \* \* shall be held to be a public use.

*Bailey*, 45 Mont. at 175 (citing Art. III, § 15, 1889 Mont. Const.). A similar provision recognizing sale, rental, or distribution of water exists in the current Montana Constitution. Mont. Const. art. IX, § 3(2).<sup>1</sup> The *Bailey* rule allows certain appropriators to develop water use and protect such use potentially up to the size limits of the water system’s facilities, with a priority date that relates back to the original notice of the water right. *Bailey*, 45 Mont. at 179. *Bailey* recognized that a water distribution appropriator does not control the specific place of use of water. Even though *Bailey* does not use the specific “service area” terminology, in *Curry*, the Supreme Court accepted the service area concept as corollary to beneficial use for sale, rental, and distribution of water. The Court in *Bailey* also recognized the risk of water speculation and qualified the rule by noting a water right is subject to partial or total abandonment if the full capacity of the system is claimed but not actually used. *Bailey*, 45 Mont. at 178; *City of Helena v. Cmty. of Rimini*, 2017 MT 145, ¶ 32, 388 Mont. 1, 12, 397 P.3d 1, 10 (addressing abandonment in context of a municipal water right).

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<sup>1</sup> This section states in full: “The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.” Mont. Const. art. IX, § 3(2).

FCC filed sufficient evidence to prove it is entitled to a service area. FCC is a water distribution appropriator. FCC appropriates water from the West Gallatin River and several other sources and uses the Farmers Canal and lateral ditches to distribute water to its shareholders and perhaps others. FCC itself does not irrigate land. Nothing in the corporate documents FCC filed lock down a specific place of use for water used by its water user shareholders. This is the same structure the Water Court followed to recognize service areas in *Curry* and other cases where the distribution appropriator does not control the actual irrigation, but rather supplies water to water users for irrigation.

In addition to the historical structure and water use, recognition of a service area also requires FCC to prove the boundaries of a proposed service area. *Curry*, ¶¶ 49-56. Establishing boundaries allows the Water Court to fulfill its obligation to provide “a description of the land, if any, to which the right is appurtenant.” Section 85-2-241(6)(e), MCA.

FCC suggests service area boundaries should include all lands “potentially irrigable” from an appropriator’s distribution system. (Motion, at 8.) The standard FCC cites is not quite accurate because the boundaries of a service area place of use do not include lands a distribution appropriator never intended to be irrigated, even if water could physically be delivered to such lands. *In re Brady Irrigation, Co.*, 2022 Mont. Water LEXIS 475, \*18. The requisite intent means intent as of July 1, 1973. *Curry*, ¶ 54.

To meet the boundary requirement, FCC asks the Court to authorize a service area that “encloses the lands where water from the Farmers canal could be and was historically delivered through the ditches, waterways, creeks, and laterals to water users.” (Motion, at 6). FCC provided a map with its motion that depicts the proposed service area in relation to its decreed place of use. (Motion, Ex. 000030). In response to Blackwood’s status report, FCC supplemented its motion with a document that includes 58 proposed legal descriptions. (Doc. 83.00). None of the legal descriptions quantify acreage; however, this is not fatal to the Motion because the raw acreage within a service area is a somewhat meaningless figure. FCC is content to leave the maximum number of acres irrigated each year within the overall service area at 14,866.00 acres. Providing another

figure as to the total acreage within the boundaries does little to assist with distribution or use of water. Instead, what really matters is the maximum number of acres irrigated within the service area because that figure reflects maximum actual historical use of water. By defining the service area boundaries, and a maximum acreage within those boundaries, the Court meets its obligation to “describe the land to which the right is appurtenant.” Section 85-2-234(6)(e), MCA.

The main evidence of intent FCC provides as to proposed service area boundaries is found in the 1923 Articles of Incorporation (“Articles”) FCC filed with its motion. The Articles state that the purpose of the corporation includes providing water to: “the lands of any of the stockholders of this corporation, or to the lands of any person who becomes the purchaser from said corporation hereafter acquired or owned by it.” (Motion, Ex. 000001). FCC did not file evidence showing the lands owned by shareholders or others where it could deliver water. However, given the suite of objectors and appearing parties in this case that received notice of FCC’s proposed service area boundaries, and the lack of any evidence of areas within the proposed service area where FCC never intended to deliver water, FCC adequately proved the boundaries by providing the map and narrative legal descriptions. A copy of the map is attached to this Order and incorporated by reference.

Although FCC did not include it in its motion, a remark is necessary to make it clear that the number of acres irrigated with each of these claims cannot exceed 14,866.00 acres, regardless of where those acres are irrigated within the service area. The Court approves the service area place of use modification with the following information remark included:

**A TOTAL OF UP TO 14866.00 ACRES WITHIN THE DESCRIBED  
HISTORICAL SERVICE AREA MAY BE IRRIGATED DURING ANY  
GIVEN IRRIGATION SEASON.**

Although not directly related to the service area request, and not specifically addressed in the motion, FCC seeks a means of diversion information



remark specifying all the lateral ditches off the Farmers Canal. The abstracts FCC included with its Motion proposed the following:

FARMERS CANAL DELIVERS WATER TO ITS USERS THROUGH A MULTITUDE OF LATERAL DITCHES AND NATURAL SOURCES, INCLUDING BUT NOT LIMITED TO: ALSOP DITCH, MONTANA STATE UNIVERSITY DITCH, WYLIE DITCH, MINDER DITCH AND EAST MINDER DITCH, BAXTER DITCH, BECK AND BORDER DITCH, HARMON DITCH, MAYNARD BORDER DITCH, SPRING DITCH OR SPRING COULEE, SECTION LINE DITCH, BAXTER BORDER DITCH, WESTLAKE DITCH, NELSON STORY DITCH, MANLEY DITCH AMONG OTHERS; SOUTH COTTONWOOD CREEK, DRY CREEK, HYALITE OR MIDDLE CREEK, MCDONALD CREEK, WYLIE CREEK, AAKJER CREEK, BAXTER CREEK, SPRING CREEK AND EAST DRY CREEK, AMONG OTHERS.

The Court has no concern including this remark, subject to the caveat that whether FCC has rights to use any or all of these ditches and conveyances is not a matter within the Court's authority to adjudicate because it implicates ditch rights, not water rights. The rights to use ditches is a matter within the jurisdiction of district courts. *See Roland v. Davis*, 2013 MT 148, 370 Mont. 327, 302 P.3d 91. Based on that caveat, the Court will include the remark for informational purposes only.

2. *Modification of Purpose of Use to "Sale" (all claims).*

The Water Use Act requires the Water Court to decree "the purpose for which the water included in the right is used." Section 85-2-234(6)(d), MCA. FCC asks the Court to modify the purpose of use for each of the claims from "irrigation" to "sale." FCC maintains the history of its project supports a sale purpose, so the proposed modification more accurately reflects historical sales of water to shareholders and third parties. FCC also suggests that when a company does not own land, but instead "sells water to third parties who put the water to beneficial use, the most accurate way to describe the purpose of its rights is for 'sale.'" (Motion, at 10). As evidentiary support, FCC asserts that throughout its history, "if an individual came to the Company with a need for water and

the property was located within FCC's distribution network, then the Company would sell water to that individual." (Motion, at 10).

FCC's proposed purpose of use modification poses a bit of a dilemma as to how best to characterize its historical practices. Many of the same reasons that support FCC's service area request also support modifying the purpose. FCC put water to beneficial use by creating a corporate structure authorizing sales to shareholders and others by constructing diversion works and a distribution system, and implemented its appropriation by selling shares to shareholders, and perhaps others.<sup>2</sup>

While the sale of water by a water distribution company like FCC is a recognized beneficial use, the Court also considers how water is used by shareholders and purchasers and, if necessary, includes remarks to reflect the historical ultimate use within the decreed service area. Sometimes this is done by leaving the purpose of use as "irrigation" or some other recognized beneficial use by the ultimate water user even though water is sold or otherwise delivered by a distribution appropriator. *See, e.g., Alfalfa Valley Irrigation Dist.*, 2021 Mont. Water LEXIS 956 (Case 40J-0618-P-2019) (separate claims for irrigation use and stock use); *In re Petrolia Irrigation Dist.*, Case 40B-0002-A-2019; 2021 Mont. Water LEXIS 61 (irrigation use). Other times the Court decrees a right for "sale" or "other purposes" and includes a remark specifying those purposes. *E.g., In re East Bench Irr. Dist.*, Case 41B-0265-P-2015; 2020 Mont. Water LEXIS 793 (claim 41B 40850-00), *aff'd* 2021 MT 319; *In re Pondera Cnty. Canal & Reservoir Co.*, Case 41M-0232-P-2017; 2022 Mont. Water LEXIS 1002 (Order Approving Motion to Modify Claims and Order Closing Case). In still other situations, primarily involving sales of stored water, the Court will designate "sale" as the sole purpose, even though water purchased from the appropriator ultimately is used for irrigation or other beneficial use.

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<sup>2</sup> The evidence FCC filed provides little, if any, proof of sales to non-shareholders. For example, the Affidavit of William Tatarka only states: "Farmers may issue shares to anyone within the reach of its system." (Tatarka Aff., ¶ 11). However, because FCC's proof establishes sales of water to parties for ultimate irrigation use, the Court views whether those third parties are shareholders or non-shareholders as immaterial to the elements of the claims the Court must adjudicate.

*Mont. Dep't of Nat. Res. & Conservation v. Daly Ditches Irrigation Dist.*, 2000 Mont. Water LEXIS 10 (Mar. 9, 2000) (Painted Rocks project).

FCC followed the *Bailey* structure by taking the actions a water distribution appropriator must take to protect priority dates. FCC proved it actually put the water to beneficial use it intended to by offering it for sale to shareholders and others. However, FCC's evidence also does not indicate any actual water use by shareholders or purchasers other than for irrigation. For example, the Water Resources Survey ("WRS") excerpt FCC filed says that by 1952 "11,380 acres of land were irrigated under the Farmers Canal with 541 acres potentially irrigable under existing facilities." (Motion, Ex. 000016). The WRS says nothing about any sales of water for a non-irrigation use. Later, when FCC negotiated a settlement following the TPD in case 41H-256, FCC agreed to, and filed, a settlement stipulation providing for a maximum number of acres as 14,866.00 acres, which only makes sense in the context of irrigation. The master's report in that case approving the settlement states "[t]hese are direct flow *irrigation* claims rights." (Case 41H-256 Master's Report, Findings of Fact ¶ 9) (emphasis added).<sup>3</sup> The affidavit from FCC's president William Tatarka also does not mention any end use other than irrigation. (Motion, Ex. 000055-57). FCC also does not provide any evidence of sales contracts or historical transactions describing sales for any ultimate purpose other than irrigation.

Given these variations, and the lack of any dispute about perfection, FCC's claims could properly be characterized with an "irrigation" purpose. However, FCC moves for the modification and provides supporting evidence. Putting the motion in the context of the evidence FCC, FCC's proposed purpose modification fits within the category where "sale" is an approved purpose. However, to properly reflect historical use, the purpose should be accompanied by a clarifying information remark. In FCC's case, the following remark is appropriate:

THE PURPOSE OF THIS WATER RIGHT IS LIMITED TO SALE AND  
DISTRIBUTION TO SHAREHOLDERS AND OTHERS FOR  
IRRIGATION USE.

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<sup>3</sup> These documents are found in the claim file for each of the claims.

In approving this modification, with the accompanying information remark, the Court notes that it adjudicates this purpose only as to FCC's eight water right claims. To the extent FCC makes its canal available to third parties to convey water across the Gallatin Valley for some other purpose, any such conveyance rights are a matter of easement or contract and beyond the jurisdiction of the Water Court, except as to matters relating to the adjudication of such rights.

3. *Associated claims information remark (all claims).*

The preliminary decree abstract for each of the claims contains an "associated claims" information remark. The remark states:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE  
ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME  
PLACE OF USE.

For each preliminary decree abstract, the remark is followed by a list of the eight FCC claims consolidated in this case. The remark also lists water right nos. 41H 45923-00 and 41H 60863-00 as associated. FCC asks that these two water rights be deleted from the list.

FCC's request is well taken. DNRC's rules define the term "associated rights" as meaning "more than one water right used at a common point of diversion, place of use or place of storage." Rule 2(a)(7), W.R.C.E.R.<sup>4</sup> Water right nos. 41H 45923-00 and 41H 60863-00 are provisional permit wells owned by 256 Properties LLC. It is unclear why DNRC singled out these two groundwater permits given FCC's large place of use, even before modification. Regardless, including these two provisional permits in the list is confusing and unnecessary, so they should be removed from the abstracts.

FCC does not ask the Court to remove the associated rights remark as to its eight claims. Although the remark generally is of limited utility, the remark is useful on FCC's

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<sup>4</sup> Confusingly, DNRC's Claims Examination Manual defines the term differently:

"Associated Rights" means a statement of claim uses the same development (well, reservoir, point of diversion) as 1) a federal reserved water right claim, 2) a new appropriation (post-July 1, 1973 water right), or 3) an exempt right. The adjudication program does not associate the place of use involving statements of claim and post-July 1, 1973 water rights.

DNRC Claims Examination Manual, p. 34.

claims because it ensures that the claims are not decoupled to irrigate different areas within the service area that might cumulatively exceed the 14,866.00 annual acreage limit.

4. *Proposed modifications to period of use (claims 41H 120530-00, 41H 120536-00, and 41H 120537-00).*

The Water Use Act requires the Water Court to decree “the inclusive dates during which the water is used each year.” Section 85-2-234(6)(h), MCA. This commonly is referred to as a water right’s “period of use.” The Preliminary Decree abstracts describe various periods of use for FCC’s claims. FCC asks the Court to modify three claims to a period of use of April 1 to October 31 that matches FCC’s other claims, as follows:

Claim No.	Priority	PD Decreed Period of Use	Proposed Period of Use
41H 120530-00	6/30/1891	April 1 to July 15	April 1 to October 31
41H 120536-00	6/30/1890	May 15 to July 1	April 1 to October 31
41H 120537-00	6/30/1890	May 15 to July 1	April 1 to October 31

a. *41H 120530-00 (West Gallatin River high water claim).*

The Preliminary Decree describes claim 41H 120530-00 as a use right to use water from the West Gallatin River for irrigation use within the period of use as described in the table above. The claim abstract also includes the following period of diversion information remark:

THIS RIGHT INCLUDES HIGH OR FLOOD WATERS OF THE WEST GALLATIN RIVER.

In addition to requesting the period of use end date be extended to October 31, FCC also asks the Court to remove the high water remark. FCC argues that statements in the claim file about high water between April 1 and July 15 “should be viewed as evidence corroborating the ability of FCC to take the full capacity of the ditch and not an arbitrary end date of FCC’s use of this right.” (Motion, at 16).

As FCC indicates, the period of use and high water remark are based upon the statement of claim FCC filed for this claim. The statement describes a “600 [inch] flood right” with a 1200 acre feet claimed volume “based on 40 days.” FCC described the

period of use as “April 1<sup>st</sup> thru flood water July 15<sup>th</sup>.” (Statement of Claim, copy in claim file). FCC does not contend anyone ever modified what FCC submitted on the claim form.

From time to time, the Water Court addresses the period of use for water rights claimed as high water or flood rights. Although the case law is not terribly well developed, a high water or flood right generally describes a water right that is used during spring runoff. *Valley Garden Ranch LLC v. Endecott*, Case 41F-A12, 2016 Mont. Water LEXIS 30, \*13 (“high or flood water rights ... status implies they are the first rights cutoff by a commissioner as spring high flows begin to recede”); *M Lazy D, LP v. McFarland White Ranch, Inc.*, Case 40A-264; 2017 Mont. Water LEXIS 1, \*1<sup>5</sup> (“[f]or this decision, highwater is defined as runoff flows in a source that are above the total combined flow rate for all decreed water rights in that source”); *cf.*, *Mack v. Anderson*, 2016 MT 204, ¶ 6, 384 Mont. 368, 370, 380 P.3d 730, 732 (“[t]he water rights are ‘high water’ rights which provide water for a limited time each year to the Mack property when there is high runoff in the creek”). The timing of spring runoff varies from year to year, so the decreed period of use for such rights is described with a date range coupled with some variation of the high water remark. The high water remark recognizes that due to annual variation in runoff timing water use may end sooner than the calendar end date during in years with low runoff.

Because DNRC examined, and the Water Court decreed, claim 41H 120530-00 based upon the high water representations FCC made in its statement of claim, the high water remark reflects the prima facie status that FCC bears the burden to overcome. Rule 19, W.R.Adj.R. To do so, FCC must prove either (a) the claim has not been historically limited to use during the high spring runoff periods, or (b) that the calendar dates do not accurately reflect the potential range within which runoff may occur. As to claim 41H 120530-00, FCC does neither. Instead, FCC merely states that it “is not aware of any call being made on this specific right based on the period of use.” (Motion, at 16). Even if

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<sup>5</sup> In *M Lazy D*, the Water Court rejected efforts to use the high water concept to add “an unquantified amount of additional flow rate” to previously decreed rights.

true, this statement does not provide evidence the claim ever was used outside the spring runoff period it originally claimed. FCC's statement that the claim effectively fills otherwise unused canal capacity because "historical practices have been to run the ditch full when the water was available", (Motion, at 16) also does not overcome the prima facie status because FCC provides no evidence this historically occurred outside the spring runoff high water period. *See M Lazy D*, at 3 (rejecting high water claim based on "combined capacity of all ditches owned by the co-owners minus their decreed flow rates"). FCC fails to prove any modification should be made to the claim 41H 120530-00 period of use.

b. *41H 120536-00 (Hyalite Creek high water claim).*

The Preliminary Decree describes claim 41H 120536-00 as a use right from Hyalite Creek (aka Middle Creek) with a high water period of diversion between calendar dates May 15 to July 1. FCC requests that it be modified to a full season period of use without a high water information remark.

FCC points out certain differences between claim 41H 120536-00 and claim 41H 120530-00. First, unlike claim 41H 120530-00, FCC says "DNRC identified the period of use as running only from May 15-July 1." Although FCC does not specifically cite the claim file as evidence, the copy of the statement of claim in the claim file indicates DNRC interlineated the form FCC filed and added the May 15 to July 1 dates. FCC's reference to DNRC raises the question of whether FCC actually claimed these dates. Second, and more persuasively (and unlike claim 41H 120530-00), the affidavit of FCC's president William Tatarka states "Farmers Canal crosses Middle or Hyalite Creek and diverts water from that source all through the season, April 1 through October 31." (Tatarka Aff., ¶ 16). All the objectors and appearing parties were given notice of this evidence and none of them objected to it. The evidence is sufficient to decree 41H 120536-00 as a use right with an April 1 to October 31 period of use, without high water limitations.<sup>6</sup>

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<sup>6</sup> FCC also seeks to support its argument by noting Middle Creek and the Farmers Canal are used as a conveyance for shareholders in the Middle Creek Water Users Association. (Motion, at 12). FCC does not

c. *41H 120537-00 (South Cottonwood Creek high water claim).*

Claim 41H 120537-00 is similar to claim 41H 120536-00, except its source is South Cottonwood Creek. But for all the same reasons as claim 41H 120536-00, the Court concludes FCC meets its burden to prove the period of use should be modified to April 1 to October 31 with the high water remark removed.

5. *Additional modifications to use rights.*

In addition to the modifications already addressed, FCC also asks the Court to modify the type of right element for claim 41H 120530-00, and to remove the issue remark from it and claim 41H 120536-00.

a. *Claim 41H 120530-00 (West Gallatin River).*

The Preliminary Decree abstract for claim 41H 120530-00 includes a priority date issue remark that states:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A USE RIGHT ON THE WEST GALLATIN RIVER WITH A PRIORITY DATE PREDATING CASE NO. 3850, GALLATIN COUNTY.

To resolve this remark, FCC asks the Court to modify the type of right from “use” to “decree” and determine that the referenced district court decree is based upon a math error. Specifically, FCC argues the district court decreed to FCC the full capacity of the Farmers Canal, but the rights enumerated in the decree add up to less than the full capacity. FCC contends that because the flow rate for claim 41H 120530-00 covers the gap between the other decreed rights and the canal capacity, this claim also should be a “decree” right.

FCC asks the Water Court to examine the prior district court decree in light of the claim FCC filed. The interpretation of a district court decree is a question of law for the Court. *In re Quigley*, 2017 MT 278, ¶ 15, 389 Mont. 283, 286, 405 P.3d 627, 631. While FCC correctly notes the district court did make findings of

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explain whether this Association is an FCC shareholder or water purchaser, so reference to it is of questionable value.



the canal's capacity, the Court finds nothing in the decree or any law cited by FCC to conclude the district court had to decree the full capacity of the canal. Indeed, prior Water Court orders have specifically declined to recognize such an argument. *See M Lazy D*.

FCC also asserts it filed claim 41H 120530-00 "to account for the use of the difference between FCC's water rights ... and the full capacity of the canal at the time of the decree." FCC does not cite anything in the claim file or provide other evidence to support this assertion. Instead, as previously discussed, the claim file shows this claim was filed as a high water claim, outside of what the district court decreed.

Even though the Court does not accept FCC's request to change the type of right, the Court concludes the priority date issue remark is resolved. This remark does not necessarily call into question the validity of the priority date because district court decrees often did not include all water rights on a source, nor was there a clear mechanism for doing so. The Supreme Court has recognized the validity of non-decreed rights on a decreed source on several occasions. *See, e.g., State ex rel. McKnight v. Dist. Court*, 111 Mont. 520, 111 P.2d 292 (1941); *Tucker v. Jones*, 8 Mont. 225, 232, 19 P. 571, 574 (1888). The remark put parties with decreed rights from old district court cases on notice of a potential priority date issue. The remark on the claims in this case provided that notice and all objections have been withdrawn. The remark served its notice purpose and should be removed.

*b. Claim 41H 120536-00 (Hyalite Creek).*

The preliminary decree abstract describes claim 41H 120536-00 as a use right to use water from Hyalite Creek for irrigation use. The abstract for claim 41H 120536-00 contains a similar remark stating:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A USE RIGHT ON HYALITE CREEK WITH A PRIORITY DATE PREDATING CASE NO. 1772 , GALLATIN COUNTY.

No objections remain based on this claim. Absent any objections, the Court does not require further evidence or proceedings to remove the remark for the same reasons as stated for claim 41H 120530-00.

### **ORDER**

THEREFORE, it is ORDERED that FCC's motion is GRANTED IN PART and DENIED IN PART. Claims 41H 120530-00, 41H 120531-00, 41H 120532-00, 41H 120533-00, 41H 120534-00, 41H 120535-00, 41H 120536-00, 41H 120537-00 are modified as provided in this Order with all issue remarks removed. The Court accepts the withdrawals of all objections, counterobjections, and notices of intent to appear and they are DISMISSED. This case is CLOSED.

This Order includes post-decree abstracts of claims 41H 120530-00, 41H 120531-00, 41H 120532-00, 41H 120533-00, 41H 120534-00, 41H 120535-00, 41H 120536-00, 41H 120537-00 to confirm the modifications to the claims are made in the State's centralized water rights record system. This Order also includes a map depicting the service area boundaries in graphic form.

**ELECTRONICALLY SIGNED AND DATED BELOW**

**Service Via Electronic Mail:**

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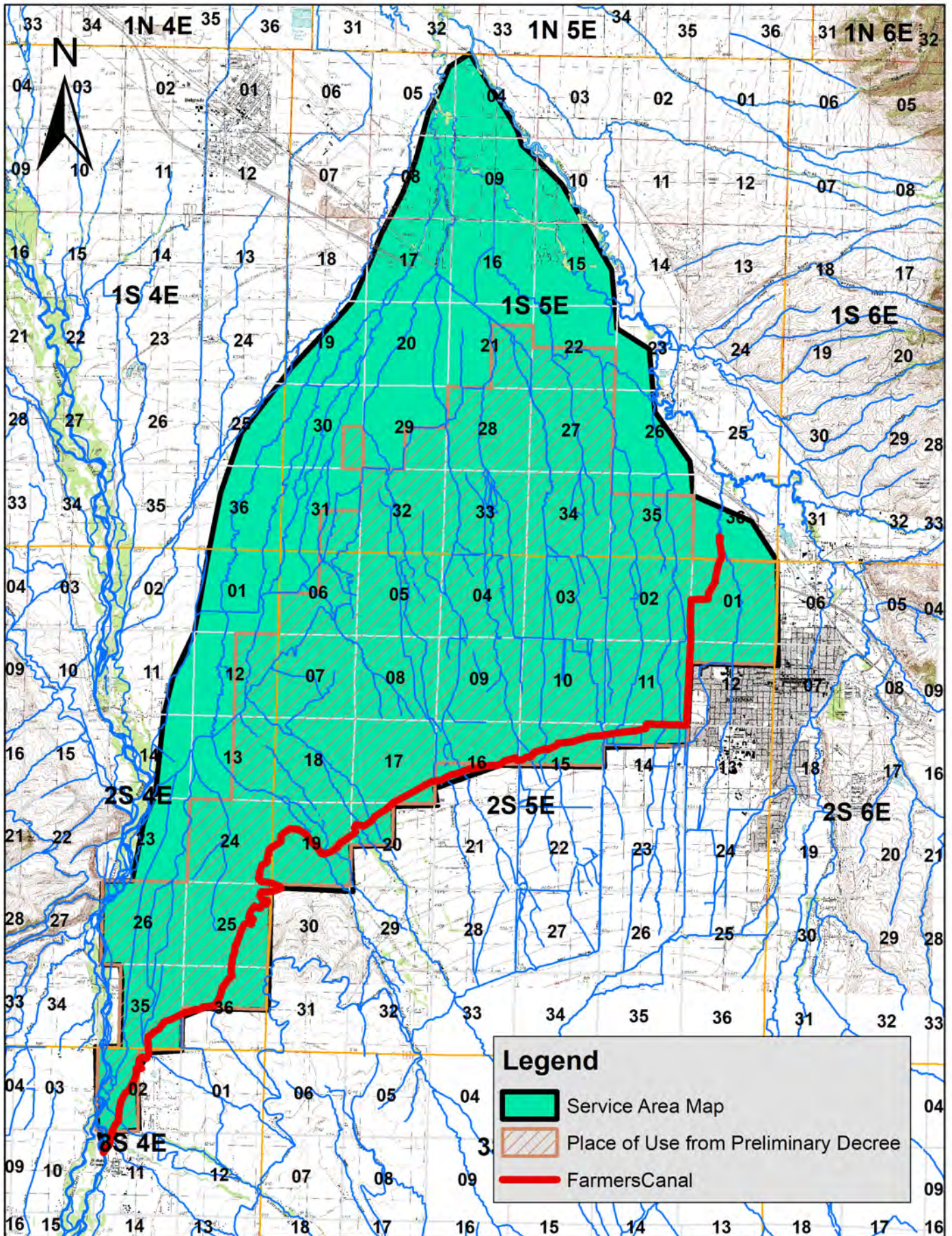
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***\*Caption and Service List Updated 5/3/23\****



# Farmers Canal Service Area Map

Farmers Ex. 000030



4

Miles



**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**GALLATIN RIVER**  
**BASIN 41H**

**Water Right Number:** 41H 120530-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** FARMERS CANAL CO  
%BILL TATARKA  
PO BOX 10686  
BOZEMAN, MT 59719

**Priority Date:** JUNE 30, 1891

**Type of Historical Right:** USE

**Purpose (use):** SALE  
THE PURPOSE OF THIS WATER RIGHT IS LIMITED TO SALE AND DISTRIBUTION TO SHAREHOLDERS AND OTHERS FOR IRRIGATION USE.

**Flow Rate:** 15.00 CFS  
COMBINED FLOW RATE FOR CLAIMS NO. 41H 120530-00, 41H 120531-00, 41H 120532-00, 41H 120533-00, 41H 120534-00, 41H 120535-00 IS LIMITED TO THE HISTORIC CAPACITY OF THE DIVERSION STRUCTURES AND THE CONVEYANCE SYSTEM.

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**\*Maximum Acres:** 14,866.00

**Source Name:** WEST GALLATIN RIVER  
**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNESE	10	3S	4E	GALLATIN
<b>Period of Diversion:</b>	APRIL 1 TO JULY 15					
<b>Diversion Means:</b>	HEADGATE					
<b>Ditch Name:</b>	FARMERS EMERGENCY SUPPLY DITCH					
2		SWNWNW	11	3S	4E	GALLATIN
<b>Period of Diversion:</b>	APRIL 1 TO JULY 15					
<b>Diversion Means:</b>	HEADGATE					
<b>Ditch Name:</b>	FARMERS CANAL					
<b>Period of Use:</b>	APRIL 1 TO JULY 15					

FARMERS CANAL DELIVERS WATER TO ITS USERS THROUGH A MULTITUDE OF LATERAL DITCHES AND NATURAL SOURCES, INCLUDING BUT NOT LIMITED TO: ALSOP DITCH, MONTANA STATE UNIVERSITY DITCH, WYLIE DITCH, MINDER DITCH AND EAST MINDER DITCH, BAXTER DITCH, BECK AND BORDER DITCH, HARMON DITCH, MAYNARD BORDER DITCH, SPRING DITCH OR SPRING COULEE, SECTION LINE DITCH, BAXTER BORDER DITCH, WESTLAKE DITCH, NELSON STORY DITCH, MANLEY DITCH AMONG OTHERS; SOUTH COTTONWOOD CREEK, DRY CREEK, HYALITE OR MIDDLE CREEK, MCDONALD CREEK, WYLIE CREEK, AAKJER CREEK, BAXTER CREEK, SPRING CREEK AND EAST DRY CREEK, AMONG OTHERS.

THIS RIGHT INCLUDES HIGH OR FLOOD WATERS OF THE WEST GALLATIN RIVER.

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1				4	1S	5E	GALLATIN
2			E2	5	1S	5E	GALLATIN
3				8	1S	5E	GALLATIN
4				9	1S	5E	GALLATIN
5			W2	10	1S	5E	GALLATIN
6				15	1S	5E	GALLATIN
7				16	1S	5E	GALLATIN
8				17	1S	5E	GALLATIN
9			SESE	18	1S	5E	GALLATIN
10				19	1S	5E	GALLATIN
11				20	1S	5E	GALLATIN
12				21	1S	5E	GALLATIN
13				22	1S	5E	GALLATIN
14			W2	23	1S	5E	GALLATIN
15				26	1S	5E	GALLATIN
16				27	1S	5E	GALLATIN
17				28	1S	5E	GALLATIN
18				29	1S	5E	GALLATIN
19				30	1S	5E	GALLATIN
20				31	1S	5E	GALLATIN
21				32	1S	5E	GALLATIN
22				33	1S	5E	GALLATIN
23				34	1S	5E	GALLATIN
24				35	1S	5E	GALLATIN
25				36	1S	5E	GALLATIN
26			E2	25	1S	4E	GALLATIN
27				36	1S	4E	GALLATIN
28				1	2S	5E	GALLATIN
29				2	2S	5E	GALLATIN
30				3	2S	5E	GALLATIN
31				4	2S	5E	GALLATIN
32				5	2S	5E	GALLATIN
33				6	2S	5E	GALLATIN
34				7	2S	5E	GALLATIN
35				8	2S	5E	GALLATIN
36				9	2S	5E	GALLATIN
37				10	2S	5E	GALLATIN
38				11	2S	5E	GALLATIN
39			N2	12	2S	5E	GALLATIN
40			N2	14	2S	5E	GALLATIN
41			N2	15	2S	5E	GALLATIN
42				16	2S	5E	GALLATIN
43				17	2S	5E	GALLATIN
44				18	2S	5E	GALLATIN

45		19	2S	5E	GALLATIN
46	NW	20	2S	5E	GALLATIN
47		1	2S	4E	GALLATIN
48	E2	11	2S	4E	GALLATIN
49		12	2S	4E	GALLATIN
50		13	2S	4E	GALLATIN
51	E2	14	2S	4E	GALLATIN
52		23	2S	4E	GALLATIN
53		24	2S	4E	GALLATIN
54		25	2S	4E	GALLATIN
55		26	2S	4E	GALLATIN
56		35	2S	4E	GALLATIN
57	N2	36	2S	4E	GALLATIN
58		2	3S	4E	GALLATIN

A TOTAL OF UP TO 14866.00 ACRES WITHIN THE DESCRIBED HISTORICAL SERVICE AREA MAY BE IRRIGATED DURING ANY GIVEN IRRIGATION SEASON. A MAP OF THE SERVICE AREA IS ATTACHED TO THE CLOSING ORDER IN WATER COURT CASE 41H-0250-R-2020.

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

120530-00	120531-00	120532-00	120533-00	120534-00	120535-00
120536-00	120537-00				

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME .

120530-00	120531-00	120532-00	120533-00	120534-00	120535-00
120536-00	120537-00				

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**GALLATIN RIVER**  
**BASIN 41H**

**Water Right Number:** 41H 120531-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** FARMERS CANAL CO  
%BILL TATARKA  
PO BOX 10686  
BOZEMAN, MT 59719

**Priority Date:** JUNE 15, 1891

**Type of Historical Right:** DECREED

**Purpose (use):** SALE  
THE PURPOSE OF THIS WATER RIGHT IS LIMITED TO SALE AND DISTRIBUTION TO SHAREHOLDERS AND OTHERS FOR IRRIGATION USE.

**Flow Rate:** 75.00 CFS  
COMBINED FLOW RATE FOR CLAIMS NO. 41H 120530-00, 41H 120531-00, 41H 120532-00, 41H 120533-00, 41H 120534-00, 41H 120535-00 IS LIMITED TO THE HISTORIC CAPACITY OF THE DIVERSION STRUCTURES AND THE CONVEYANCE SYSTEM.

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**\*Maximum Acres:** 14,866.00

**Source Name:** WEST GALLATIN RIVER  
**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNESE	10	3S	4E	GALLATIN
<b>Period of Diversion:</b>	APRIL 1 TO OCTOBER 31					
<b>Diversion Means:</b>	HEADGATE					
<b>Ditch Name:</b>	FARMERS EMERGENCY SUPPLY DITCH					
2		SWNWNW	11	3S	4E	GALLATIN
<b>Period of Diversion:</b>	APRIL 1 TO OCTOBER 31					
<b>Diversion Means:</b>	HEADGATE					
<b>Ditch Name:</b>	FARMERS CANAL					
<b>Period of Use:</b>	APRIL 1 TO OCTOBER 31					

FARMERS CANAL DELIVERS WATER TO ITS USERS THROUGH A MULTITUDE OF LATERAL DITCHES AND NATURAL SOURCES, INCLUDING BUT NOT LIMITED TO: ALSOP DITCH, MONTANA STATE UNIVERSITY DITCH, WYLIE DITCH, MINDER DITCH AND EAST MINDER DITCH, BAXTER DITCH, BECK AND BORDER DITCH, HARMON DITCH, MAYNARD BORDER DITCH, SPRING DITCH OR SPRING COULEE, SECTION LINE DITCH, BAXTER BORDER DITCH, WESTLAKE DITCH, NELSON STORY DITCH, MANLEY DITCH AMONG OTHERS; SOUTH COTTONWOOD CREEK, DRY CREEK, HYALITE OR MIDDLE CREEK, MCDONALD CREEK, WYLIE CREEK, AAKJER CREEK, BAXTER CREEK, SPRING CREEK AND EAST DRY CREEK, AMONG OTHERS.



**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1				4	1S	5E	GALLATIN
2			E2	5	1S	5E	GALLATIN
3				8	1S	5E	GALLATIN
4				9	1S	5E	GALLATIN
5			W2	10	1S	5E	GALLATIN
6				15	1S	5E	GALLATIN
7				16	1S	5E	GALLATIN
8				17	1S	5E	GALLATIN
9			SESE	18	1S	5E	GALLATIN
10				19	1S	5E	GALLATIN
11				20	1S	5E	GALLATIN
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13				22	1S	5E	GALLATIN
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16				27	1S	5E	GALLATIN
17				28	1S	5E	GALLATIN
18				29	1S	5E	GALLATIN
19				30	1S	5E	GALLATIN
20				31	1S	5E	GALLATIN
21				32	1S	5E	GALLATIN
22				33	1S	5E	GALLATIN
23				34	1S	5E	GALLATIN
24				35	1S	5E	GALLATIN
25				36	1S	5E	GALLATIN
26			E2	25	1S	4E	GALLATIN
27				36	1S	4E	GALLATIN
28				1	2S	5E	GALLATIN
29				2	2S	5E	GALLATIN
30				3	2S	5E	GALLATIN
31				4	2S	5E	GALLATIN
32				5	2S	5E	GALLATIN
33				6	2S	5E	GALLATIN
34				7	2S	5E	GALLATIN
35				8	2S	5E	GALLATIN
36				9	2S	5E	GALLATIN
37				10	2S	5E	GALLATIN
38				11	2S	5E	GALLATIN
39			N2	12	2S	5E	GALLATIN
40			N2	14	2S	5E	GALLATIN
41			N2	15	2S	5E	GALLATIN
42				16	2S	5E	GALLATIN
43				17	2S	5E	GALLATIN
44				18	2S	5E	GALLATIN
45				19	2S	5E	GALLATIN

46	NW	20	2S	5E	GALLATIN
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51	E2	14	2S	4E	GALLATIN
52		23	2S	4E	GALLATIN
53		24	2S	4E	GALLATIN
54		25	2S	4E	GALLATIN
55		26	2S	4E	GALLATIN
56		35	2S	4E	GALLATIN
57	N2	36	2S	4E	GALLATIN
58		2	3S	4E	GALLATIN

A TOTAL OF UP TO 14866.00 ACRES WITHIN THE DESCRIBED HISTORICAL SERVICE AREA MAY BE IRRIGATED DURING ANY GIVEN IRRIGATION SEASON. A MAP OF THE SERVICE AREA IS ATTACHED TO THE CLOSING ORDER IN WATER COURT CASE 41H-0250-R-2020.

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

120530-00	120531-00	120532-00	120533-00	120534-00	120535-00
120536-00	120537-00				

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME .

120530-00	120531-00	120532-00	120533-00	120534-00	120535-00
120536-00	120537-00				

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**GALLATIN RIVER**  
**BASIN 41H**

**Water Right Number:** 41H 120532-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** FARMERS CANAL CO  
%BILL TATARKA  
PO BOX 10686  
BOZEMAN, MT 59719

**Priority Date:** APRIL 2, 1892

**Type of Historical Right:** DECREED

**Purpose (use):** SALE  
THE PURPOSE OF THIS WATER RIGHT IS LIMITED TO SALE AND DISTRIBUTION TO SHAREHOLDERS AND OTHERS FOR IRRIGATION USE.

**Flow Rate:** 45.50 CFS  
COMBINED FLOW RATE FOR CLAIMS NO. 41H 120530-00, 41H 120531-00, 41H 120532-00, 41H 120533-00, 41H 120534-00, 41H 120535-00 IS LIMITED TO THE HISTORIC CAPACITY OF THE DIVERSION STRUCTURES AND THE CONVEYANCE SYSTEM.

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**\*Maximum Acres:** 14,866.00

**Source Name:** WEST GALLATIN RIVER  
**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNESE	10	3S	4E	GALLATIN
<b>Period of Diversion:</b>	APRIL 1 TO OCTOBER 31					
<b>Diversion Means:</b>	HEADGATE					
<b>Ditch Name:</b>	FARMERS EMERGENCY SUPPLY DITCH					
2		SWNWNW	11	3S	4E	GALLATIN
<b>Period of Diversion:</b>	APRIL 1 TO OCTOBER 31					
<b>Diversion Means:</b>	HEADGATE					
<b>Ditch Name:</b>	FARMERS CANAL					
<b>Period of Use:</b>	APRIL 1 TO OCTOBER 31					

FARMERS CANAL DELIVERS WATER TO ITS USERS THROUGH A MULTITUDE OF LATERAL DITCHES AND NATURAL SOURCES, INCLUDING BUT NOT LIMITED TO: ALSOP DITCH, MONTANA STATE UNIVERSITY DITCH, WYLIE DITCH, MINDER DITCH AND EAST MINDER DITCH, BAXTER DITCH, BECK AND BORDER DITCH, HARMON DITCH, MAYNARD BORDER DITCH, SPRING DITCH OR SPRING COULEE, SECTION LINE DITCH, BAXTER BORDER DITCH, WESTLAKE DITCH, NELSON STORY DITCH, MANLEY DITCH AMONG OTHERS; SOUTH COTTONWOOD CREEK, DRY CREEK, HYALITE OR MIDDLE CREEK, MCDONALD CREEK, WYLIE CREEK, AAKJER CREEK, BAXTER CREEK, SPRING CREEK AND EAST DRY CREEK, AMONG OTHERS.

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1				4	1S	5E	GALLATIN
2			E2	5	1S	5E	GALLATIN
3				8	1S	5E	GALLATIN
4				9	1S	5E	GALLATIN
5			W2	10	1S	5E	GALLATIN
6				15	1S	5E	GALLATIN
7				16	1S	5E	GALLATIN
8				17	1S	5E	GALLATIN
9			SESE	18	1S	5E	GALLATIN
10				19	1S	5E	GALLATIN
11				20	1S	5E	GALLATIN
12				21	1S	5E	GALLATIN
13				22	1S	5E	GALLATIN
14			W2	23	1S	5E	GALLATIN
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16				27	1S	5E	GALLATIN
17				28	1S	5E	GALLATIN
18				29	1S	5E	GALLATIN
19				30	1S	5E	GALLATIN
20				31	1S	5E	GALLATIN
21				32	1S	5E	GALLATIN
22				33	1S	5E	GALLATIN
23				34	1S	5E	GALLATIN
24				35	1S	5E	GALLATIN
25				36	1S	5E	GALLATIN
26			E2	25	1S	4E	GALLATIN
27				36	1S	4E	GALLATIN
28				1	2S	5E	GALLATIN
29				2	2S	5E	GALLATIN
30				3	2S	5E	GALLATIN
31				4	2S	5E	GALLATIN
32				5	2S	5E	GALLATIN
33				6	2S	5E	GALLATIN
34				7	2S	5E	GALLATIN
35				8	2S	5E	GALLATIN
36				9	2S	5E	GALLATIN
37				10	2S	5E	GALLATIN
38				11	2S	5E	GALLATIN
39			N2	12	2S	5E	GALLATIN
40			N2	14	2S	5E	GALLATIN
41			N2	15	2S	5E	GALLATIN
42				16	2S	5E	GALLATIN
43				17	2S	5E	GALLATIN
44				18	2S	5E	GALLATIN
45				19	2S	5E	GALLATIN

46	NW	20	2S	5E	GALLATIN
47		1	2S	4E	GALLATIN
48	E2	11	2S	4E	GALLATIN
49		12	2S	4E	GALLATIN
50		13	2S	4E	GALLATIN
51	E2	14	2S	4E	GALLATIN
52		23	2S	4E	GALLATIN
53		24	2S	4E	GALLATIN
54		25	2S	4E	GALLATIN
55		26	2S	4E	GALLATIN
56		35	2S	4E	GALLATIN
57	N2	36	2S	4E	GALLATIN
58		2	3S	4E	GALLATIN

A TOTAL OF UP TO 14866.00 ACRES WITHIN THE DESCRIBED HISTORICAL SERVICE AREA MAY BE IRRIGATED DURING ANY GIVEN IRRIGATION SEASON. A MAP OF THE SERVICE AREA IS ATTACHED TO THE CLOSING ORDER IN WATER COURT CASE 41H-0250-R-2020.

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

120530-00	120531-00	120532-00	120533-00	120534-00	120535-00
120536-00	120537-00				

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME .

120530-00	120531-00	120532-00	120533-00	120534-00	120535-00
120536-00	120537-00				

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**GALLATIN RIVER**  
**BASIN 41H**

**Water Right Number:** 41H 120533-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** FARMERS CANAL CO  
%BILL TATARKA  
PO BOX 10686  
BOZEMAN, MT 59719

**Priority Date:** JUNE 15, 1883

**Type of Historical Right:** DECREED

**Purpose (use):** SALE  
THE PURPOSE OF THIS WATER RIGHT IS LIMITED TO SALE AND DISTRIBUTION TO SHAREHOLDERS AND OTHERS FOR IRRIGATION USE.

**Flow Rate:** 1.00 CFS  
COMBINED FLOW RATE FOR CLAIMS NO. 41H 120530-00, 41H 120531-00, 41H 120532-00, 41H 120533-00, 41H 120534-00, 41H 120535-00 IS LIMITED TO THE HISTORIC CAPACITY OF THE DIVERSION STRUCTURES AND THE CONVEYANCE SYSTEM.

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**\*Maximum Acres:** 14,866.00

**Source Name:** WEST GALLATIN RIVER  
**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNESE	10	3S	4E	GALLATIN
<b>Period of Diversion:</b>	APRIL 1 TO OCTOBER 31					
<b>Diversion Means:</b>	HEADGATE					
<b>Ditch Name:</b>	FARMERS EMERGENCY SUPPLY DITCH					
2		SWNWNW	11	3S	4E	GALLATIN
<b>Period of Diversion:</b>	APRIL 1 TO OCTOBER 31					
<b>Diversion Means:</b>	HEADGATE					
<b>Ditch Name:</b>	FARMERS CANAL					
<b>Period of Use:</b>	APRIL 1 TO OCTOBER 31					

FARMERS CANAL DELIVERS WATER TO ITS USERS THROUGH A MULTITUDE OF LATERAL DITCHES AND NATURAL SOURCES, INCLUDING BUT NOT LIMITED TO: ALSOP DITCH, MONTANA STATE UNIVERSITY DITCH, WYLIE DITCH, MINDER DITCH AND EAST MINDER DITCH, BAXTER DITCH, BECK AND BORDER DITCH, HARMON DITCH, MAYNARD BORDER DITCH, SPRING DITCH OR SPRING COULEE, SECTION LINE DITCH, BAXTER BORDER DITCH, WESTLAKE DITCH, NELSON STORY DITCH, MANLEY DITCH AMONG OTHERS; SOUTH COTTONWOOD CREEK, DRY CREEK, HYALITE OR MIDDLE CREEK, MCDONALD CREEK, WYLIE CREEK, AAKJER CREEK, BAXTER CREEK, SPRING CREEK AND EAST DRY CREEK, AMONG OTHERS.

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1				4	1S	5E	GALLATIN
2			E2	5	1S	5E	GALLATIN
3				8	1S	5E	GALLATIN
4				9	1S	5E	GALLATIN
5			W2	10	1S	5E	GALLATIN
6				15	1S	5E	GALLATIN
7				16	1S	5E	GALLATIN
8				17	1S	5E	GALLATIN
9			SESE	18	1S	5E	GALLATIN
10				19	1S	5E	GALLATIN
11				20	1S	5E	GALLATIN
12				21	1S	5E	GALLATIN
13				22	1S	5E	GALLATIN
14			W2	23	1S	5E	GALLATIN
15				26	1S	5E	GALLATIN
16				27	1S	5E	GALLATIN
17				28	1S	5E	GALLATIN
18				29	1S	5E	GALLATIN
19				30	1S	5E	GALLATIN
20				31	1S	5E	GALLATIN
21				32	1S	5E	GALLATIN
22				33	1S	5E	GALLATIN
23				34	1S	5E	GALLATIN
24				35	1S	5E	GALLATIN
25				36	1S	5E	GALLATIN
26			E2	25	1S	4E	GALLATIN
27				36	1S	4E	GALLATIN
28				1	2S	5E	GALLATIN
29				2	2S	5E	GALLATIN
30				3	2S	5E	GALLATIN
31				4	2S	5E	GALLATIN
32				5	2S	5E	GALLATIN
33				6	2S	5E	GALLATIN
34				7	2S	5E	GALLATIN
35				8	2S	5E	GALLATIN
36				9	2S	5E	GALLATIN
37				10	2S	5E	GALLATIN
38				11	2S	5E	GALLATIN
39			N2	12	2S	5E	GALLATIN
40			N2	14	2S	5E	GALLATIN
41			N2	15	2S	5E	GALLATIN
42				16	2S	5E	GALLATIN
43				17	2S	5E	GALLATIN
44				18	2S	5E	GALLATIN
45				19	2S	5E	GALLATIN

46	NW	20	2S	5E	GALLATIN
47		1	2S	4E	GALLATIN
48	E2	11	2S	4E	GALLATIN
49		12	2S	4E	GALLATIN
50		13	2S	4E	GALLATIN
51	E2	14	2S	4E	GALLATIN
52		23	2S	4E	GALLATIN
53		24	2S	4E	GALLATIN
54		25	2S	4E	GALLATIN
55		26	2S	4E	GALLATIN
56		35	2S	4E	GALLATIN
57	N2	36	2S	4E	GALLATIN
58		2	3S	4E	GALLATIN

A TOTAL OF UP TO 14866.00 ACRES WITHIN THE DESCRIBED HISTORICAL SERVICE AREA MAY BE IRRIGATED DURING ANY GIVEN IRRIGATION SEASON. A MAP OF THE SERVICE AREA IS ATTACHED TO THE CLOSING ORDER IN WATER COURT CASE 41H-0250-R-2020.

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

120530-00	120531-00	120532-00	120533-00	120534-00	120535-00
120536-00	120537-00				

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME .

120530-00	120531-00	120532-00	120533-00	120534-00	120535-00
120536-00	120537-00				



**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
GALLATIN RIVER  
BASIN 41H**

**Water Right Number:** 41H 120534-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** FARMERS CANAL CO  
%BILL TATARKA  
PO BOX 10686  
BOZEMAN, MT 59719

**Priority Date:** JULY 1, 1890

**Type of Historical Right:** DECREED

**Purpose (use):** SALE  
THE PURPOSE OF THIS WATER RIGHT IS LIMITED TO SALE AND DISTRIBUTION TO SHAREHOLDERS AND OTHERS FOR IRRIGATION USE.

**Flow Rate:** 18.50 CFS  
COMBINED FLOW RATE FOR CLAIMS NO. 41H 120530-00, 41H 120531-00, 41H 120532-00, 41H 120533-00, 41H 120534-00, 41H 120535-00 IS LIMITED TO THE HISTORIC CAPACITY OF THE DIVERSION STRUCTURES AND THE CONVEYANCE SYSTEM.

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**\*Maximum Acres:** 14,866.00

**Source Name:** WEST GALLATIN RIVER  
**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNESE	10	3S	4E	GALLATIN
<b>Period of Diversion:</b>	APRIL 1 TO OCTOBER 31					
<b>Diversion Means:</b>	HEADGATE					
<b>Ditch Name:</b>	FARMERS EMERGENCY SUPPLY DITCH					
2		SWNWNW	11	3S	4E	GALLATIN
<b>Period of Diversion:</b>	APRIL 1 TO OCTOBER 31					
<b>Diversion Means:</b>	HEADGATE					
<b>Ditch Name:</b>	FARMERS CANAL					
FARMERS CANAL DELIVERS WATER TO ITS USERS THROUGH A MULTITUDE OF LATERAL DITCHES AND NATURAL SOURCES, INCLUDING BUT NOT LIMITED TO: ALSOP DITCH, MONTANA STATE UNIVERSITY DITCH, WYLIE DITCH, MINDER DITCH AND EAST MINDER DITCH, BAXTER DITCH, BECK AND BORDER DITCH, HARMON DITCH, MAYNARD BORDER DITCH, SPRING DITCH OR SPRING COULEE, SECTION LINE DITCH, BAXTER BORDER DITCH, WESTLAKE DITCH, NELSON STORY DITCH, MANLEY DITCH AMONG OTHERS; SOUTH COTTONWOOD CREEK, DRY CREEK, HYALITE OR MIDDLE CREEK, MCDONALD CREEK, WYLIE CREEK, AAKJER CREEK, BAXTER CREEK, SPRING CREEK AND EAST DRY CREEK, AMONG OTHERS.						
<b>Period of Use:</b>	APRIL 1 TO OCTOBER 31					

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1				4	1S	5E	GALLATIN
2			E2	5	1S	5E	GALLATIN
3				8	1S	5E	GALLATIN
4				9	1S	5E	GALLATIN
5			W2	10	1S	5E	GALLATIN
6				15	1S	5E	GALLATIN
7				16	1S	5E	GALLATIN
8				17	1S	5E	GALLATIN
9			SESE	18	1S	5E	GALLATIN
10				19	1S	5E	GALLATIN
11				20	1S	5E	GALLATIN
12				21	1S	5E	GALLATIN
13				22	1S	5E	GALLATIN
14			W2	23	1S	5E	GALLATIN
15				26	1S	5E	GALLATIN
16				27	1S	5E	GALLATIN
17				28	1S	5E	GALLATIN
18				29	1S	5E	GALLATIN
19				30	1S	5E	GALLATIN
20				31	1S	5E	GALLATIN
21				32	1S	5E	GALLATIN
22				33	1S	5E	GALLATIN
23				34	1S	5E	GALLATIN
24				35	1S	5E	GALLATIN
25				36	1S	5E	GALLATIN
26			E2	25	1S	4E	GALLATIN
27				36	1S	4E	GALLATIN
28				1	2S	5E	GALLATIN
29				2	2S	5E	GALLATIN
30				3	2S	5E	GALLATIN
31				4	2S	5E	GALLATIN
32				5	2S	5E	GALLATIN
33				6	2S	5E	GALLATIN
34				7	2S	5E	GALLATIN
35				8	2S	5E	GALLATIN
36				9	2S	5E	GALLATIN
37				10	2S	5E	GALLATIN
38				11	2S	5E	GALLATIN
39			N2	12	2S	5E	GALLATIN
40			N2	14	2S	5E	GALLATIN
41			N2	15	2S	5E	GALLATIN
42				16	2S	5E	GALLATIN
43				17	2S	5E	GALLATIN
44				18	2S	5E	GALLATIN
45				19	2S	5E	GALLATIN

46	NW	20	2S	5E	GALLATIN
47		1	2S	4E	GALLATIN
48	E2	11	2S	4E	GALLATIN
49		12	2S	4E	GALLATIN
50		13	2S	4E	GALLATIN
51	E2	14	2S	4E	GALLATIN
52		23	2S	4E	GALLATIN
53		24	2S	4E	GALLATIN
54		25	2S	4E	GALLATIN
55		26	2S	4E	GALLATIN
56		35	2S	4E	GALLATIN
57	N2	36	2S	4E	GALLATIN
58		2	3S	4E	GALLATIN

A TOTAL OF UP TO 14866.00 ACRES WITHIN THE DESCRIBED HISTORICAL SERVICE AREA MAY BE IRRIGATED DURING ANY GIVEN IRRIGATION SEASON. A MAP OF THE SERVICE AREA IS ATTACHED TO THE CLOSING ORDER IN WATER COURT CASE 41H-0250-R-2020.

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

120530-00	120531-00	120532-00	120533-00	120534-00	120535-00
120536-00	120537-00				

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME .

120530-00	120531-00	120532-00	120533-00	120534-00	120535-00
120536-00	120537-00				

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**GALLATIN RIVER**  
**BASIN 41H**

**Water Right Number:** 41H 120535-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** FARMERS CANAL CO  
%BILL TATARKA  
PO BOX 10686  
BOZEMAN, MT 59719

**Priority Date:** SEPTEMBER 29, 1890

**Type of Historical Right:** DECREED

**Purpose (use):** SALE  
THE PURPOSE OF THIS WATER RIGHT IS LIMITED TO SALE AND DISTRIBUTION TO SHAREHOLDERS AND OTHERS FOR IRRIGATION USE.

**Flow Rate:** 125.00 CFS  
COMBINED FLOW RATE FOR CLAIMS NO. 41H 120530-00, 41H 120531-00, 41H 120532-00, 41H 120533-00, 41H 120534-00, 41H 120535-00 IS LIMITED TO THE HISTORIC CAPACITY OF THE DIVERSION STRUCTURES AND THE CONVEYANCE SYSTEM.

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**\*Maximum Acres:** 14,866.00

**Source Name:** WEST GALLATIN RIVER  
**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNESE	10	3S	4E	GALLATIN
<b>Period of Diversion:</b>	APRIL 1 TO OCTOBER 31					
<b>Diversion Means:</b>	HEADGATE					
<b>Ditch Name:</b>	FARMERS EMERGENCY SUPPLY DITCH					
2		SWNWNW	11	3S	4E	GALLATIN
<b>Period of Diversion:</b>	APRIL 1 TO OCTOBER 31					
<b>Diversion Means:</b>	HEADGATE					
<b>Ditch Name:</b>	FARMERS CANAL					
FARMERS CANAL DELIVERS WATER TO ITS USERS THROUGH A MULTITUDE OF LATERAL DITCHES AND NATURAL SOURCES, INCLUDING BUT NOT LIMITED TO: ALSOP DITCH, MONTANA STATE UNIVERSITY DITCH, WYLIE DITCH, MINDER DITCH AND EAST MINDER DITCH, BAXTER DITCH, BECK AND BORDER DITCH, HARMON DITCH, MAYNARD BORDER DITCH, SPRING DITCH OR SPRING COULEE, SECTION LINE DITCH, BAXTER BORDER DITCH, WESTLAKE DITCH, NELSON STORY DITCH, MANLEY DITCH AMONG OTHERS; SOUTH COTTONWOOD CREEK, DRY CREEK, HYALITE OR MIDDLE CREEK, MCDONALD CREEK, WYLIE CREEK, AAKJER CREEK, BAXTER CREEK, SPRING CREEK AND EAST DRY CREEK, AMONG OTHERS.						
<b>Period of Use:</b>	APRIL 1 TO OCTOBER 31					

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1				4	1S	5E	GALLATIN
2			E2	5	1S	5E	GALLATIN
3				8	1S	5E	GALLATIN
4				9	1S	5E	GALLATIN
5			W2	10	1S	5E	GALLATIN
6				15	1S	5E	GALLATIN
7				16	1S	5E	GALLATIN
8				17	1S	5E	GALLATIN
9			SESE	18	1S	5E	GALLATIN
10				19	1S	5E	GALLATIN
11				20	1S	5E	GALLATIN
12				21	1S	5E	GALLATIN
13				22	1S	5E	GALLATIN
14			W2	23	1S	5E	GALLATIN
15				26	1S	5E	GALLATIN
16				27	1S	5E	GALLATIN
17				28	1S	5E	GALLATIN
18				29	1S	5E	GALLATIN
19				30	1S	5E	GALLATIN
20				31	1S	5E	GALLATIN
21				32	1S	5E	GALLATIN
22				33	1S	5E	GALLATIN
23				34	1S	5E	GALLATIN
24				35	1S	5E	GALLATIN
25				36	1S	5E	GALLATIN
26			E2	25	1S	4E	GALLATIN
27				36	1S	4E	GALLATIN
28				1	2S	5E	GALLATIN
29				2	2S	5E	GALLATIN
30				3	2S	5E	GALLATIN
31				4	2S	5E	GALLATIN
32				5	2S	5E	GALLATIN
33				6	2S	5E	GALLATIN
34				7	2S	5E	GALLATIN
35				8	2S	5E	GALLATIN
36				9	2S	5E	GALLATIN
37				10	2S	5E	GALLATIN
38				11	2S	5E	GALLATIN
39			N2	12	2S	5E	GALLATIN
40			N2	14	2S	5E	GALLATIN
41			N2	15	2S	5E	GALLATIN
42				16	2S	5E	GALLATIN
43				17	2S	5E	GALLATIN
44				18	2S	5E	GALLATIN
45				19	2S	5E	GALLATIN

46	NW	20	2S	5E	GALLATIN
47		1	2S	4E	GALLATIN
48	E2	11	2S	4E	GALLATIN
49		12	2S	4E	GALLATIN
50		13	2S	4E	GALLATIN
51	E2	14	2S	4E	GALLATIN
52		23	2S	4E	GALLATIN
53		24	2S	4E	GALLATIN
54		25	2S	4E	GALLATIN
55		26	2S	4E	GALLATIN
56		35	2S	4E	GALLATIN
57	N2	36	2S	4E	GALLATIN
58		2	3S	4E	GALLATIN

A TOTAL OF UP TO 14866.00 ACRES WITHIN THE DESCRIBED HISTORICAL SERVICE AREA MAY BE IRRIGATED DURING ANY GIVEN IRRIGATION SEASON. A MAP OF THE SERVICE AREA IS ATTACHED TO THE CLOSING ORDER IN WATER COURT CASE 41H-0250-R-2020.

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

120530-00	120531-00	120532-00	120533-00	120534-00	120535-00
120536-00	120537-00				

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME .

120530-00	120531-00	120532-00	120533-00	120534-00	120535-00
120536-00	120537-00				

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**GALLATIN RIVER**  
**BASIN 41H**

**Water Right Number:** 41H 120536-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** FARMERS CANAL CO  
%BILL TATARKA  
PO BOX 10686  
BOZEMAN, MT 59719

**Priority Date:** JUNE 30, 1890

**Type of Historical Right:** USE

**Purpose (use):** SALE

THE PURPOSE OF THIS WATER RIGHT IS LIMITED TO SALE AND DISTRIBUTION TO SHAREHOLDERS AND OTHERS FOR IRRIGATION USE.

**Flow Rate:** 125.00 CFS

FLOW RATE FOR THIS RIGHT IS LIMITED TO THE HISTORIC CAPACITY OF THE DIVERSION STRUCTURE AND THE CONVEYANCE SYSTEM.

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**\*Maximum Acres:** 14,866.00

**Source Name:** HYALITE CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWNW	20	2S	5E	GALLATIN

**Period of Diversion:** APRIL 1 TO OCTOBER 31

**Diversion Means:** HEADGATE

**Ditch Name:** FARMERS CANAL

FARMERS CANAL DELIVERS WATER TO ITS USERS THROUGH A MULTITUDE OF LATERAL DITCHES AND NATURAL SOURCES, INCLUDING BUT NOT LIMITED TO: ALSOP DITCH, MONTANA STATE UNIVERSITY DITCH, WYLIE DITCH, MINDER DITCH AND EAST MINDER DITCH, BAXTER DITCH, BECK AND BORDER DITCH, HARMON DITCH, MAYNARD BORDER DITCH, SPRING DITCH OR SPRING COULEE, SECTION LINE DITCH, BAXTER BORDER DITCH, WESTLAKE DITCH, NELSON STORY DITCH, MANLEY DITCH AMONG OTHERS; SOUTH COTTONWOOD CREEK, DRY CREEK, HYALITE OR MIDDLE CREEK, MCDONALD CREEK, WYLIE CREEK, AAKJER CREEK, BAXTER CREEK, SPRING CREEK AND EAST DRY CREEK, AMONG OTHERS.

**Period of Use:** APRIL 1 TO OCTOBER 31

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1				4	1S	5E	GALLATIN
2			E2	5	1S	5E	GALLATIN
3				8	1S	5E	GALLATIN
4				9	1S	5E	GALLATIN

5	W2	10	1S	5E	GALLATIN
6		15	1S	5E	GALLATIN
7		16	1S	5E	GALLATIN
8		17	1S	5E	GALLATIN
9	SESE	18	1S	5E	GALLATIN
10		19	1S	5E	GALLATIN
11		20	1S	5E	GALLATIN
12		21	1S	5E	GALLATIN
13		22	1S	5E	GALLATIN
14	W2	23	1S	5E	GALLATIN
15		26	1S	5E	GALLATIN
16		27	1S	5E	GALLATIN
17		28	1S	5E	GALLATIN
18		29	1S	5E	GALLATIN
19		30	1S	5E	GALLATIN
20		31	1S	5E	GALLATIN
21		32	1S	5E	GALLATIN
22		33	1S	5E	GALLATIN
23		34	1S	5E	GALLATIN
24		35	1S	5E	GALLATIN
25		36	1S	5E	GALLATIN
26	E2	25	1S	4E	GALLATIN
27		36	1S	4E	GALLATIN
28		1	2S	5E	GALLATIN
29		2	2S	5E	GALLATIN
30		3	2S	5E	GALLATIN
31		4	2S	5E	GALLATIN
32		5	2S	5E	GALLATIN
33		6	2S	5E	GALLATIN
34		7	2S	5E	GALLATIN
35		8	2S	5E	GALLATIN
36		9	2S	5E	GALLATIN
37		10	2S	5E	GALLATIN
38		11	2S	5E	GALLATIN
39	N2	12	2S	5E	GALLATIN
40	N2	14	2S	5E	GALLATIN
41	N2	15	2S	5E	GALLATIN
42		16	2S	5E	GALLATIN
43		17	2S	5E	GALLATIN
44		18	2S	5E	GALLATIN
45		19	2S	5E	GALLATIN
46	NW	20	2S	5E	GALLATIN
47		1	2S	4E	GALLATIN
48	E2	11	2S	4E	GALLATIN
49		12	2S	4E	GALLATIN
50		13	2S	4E	GALLATIN
51	E2	14	2S	4E	GALLATIN



52		23	2S	4E	GALLATIN
53		24	2S	4E	GALLATIN
54		25	2S	4E	GALLATIN
55		26	2S	4E	GALLATIN
56		35	2S	4E	GALLATIN
57	N2	36	2S	4E	GALLATIN
58		2	3S	4E	GALLATIN

A TOTAL OF UP TO 14866.00 ACRES WITHIN THE DESCRIBED HISTORICAL SERVICE AREA MAY BE IRRIGATED DURING ANY GIVEN IRRIGATION SEASON. A MAP OF THE SERVICE AREA IS ATTACHED TO THE CLOSING ORDER IN WATER COURT CASE 41H-0250-R-2020.

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

120530-00	120531-00	120532-00	120533-00	120534-00	120535-00
120536-00	120537-00				

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME .

120530-00	120531-00	120532-00	120533-00	120534-00	120535-00
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**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**GALLATIN RIVER**  
**BASIN 41H**

**Water Right Number:** 41H 120537-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** FARMERS CANAL CO  
%BILL TATARKA  
PO BOX 10686  
BOZEMAN, MT 59719

**Priority Date:** JUNE 30, 1890

**Type of Historical Right:** USE

**Purpose (use):** SALE  
THE PURPOSE OF THIS WATER RIGHT IS LIMITED TO SALE AND DISTRIBUTION TO SHAREHOLDERS AND OTHERS FOR IRRIGATION USE.

**Flow Rate:** 125.00 CFS  
FLOW RATE FOR THIS RIGHT IS LIMITED TO THE HISTORIC CAPACITY OF THE DIVERSION STRUCTURE AND THE CONVEYANCE SYSTEM.

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**\*Maximum Acres:** 14,866.00

**Source Name:** SOUTH COTTONWOOD CREEK  
**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twtp</u>	<u>Rge</u>	<u>County</u>
1		NWSESW	2	3S	4E	GALLATIN

**Period of Diversion:** APRIL 1 TO OCTOBER 31  
**Diversion Means:** HEADGATE  
**Ditch Name:** FARMERS CANAL  
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**Period of Use:** APRIL 1 TO OCTOBER 31

**\*Place of Use:**

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13		22	1S	5E	GALLATIN
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18		29	1S	5E	GALLATIN
19		30	1S	5E	GALLATIN
20		31	1S	5E	GALLATIN
21		32	1S	5E	GALLATIN
22		33	1S	5E	GALLATIN
23		34	1S	5E	GALLATIN
24		35	1S	5E	GALLATIN
25		36	1S	5E	GALLATIN
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27		36	1S	4E	GALLATIN
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29		2	2S	5E	GALLATIN
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